#4484

BILL NO. Z-91-08-09

ZONING MAP ORDINANCE NO. Z-Do Not Pass

AN ORDINANCE amending the City of Fort Wayne Zoning Map No. R-38.

BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF FORT WAYNE, INDIANA:

SECTION 1. That the area described as follows is hereby designated an R-3 (Multi-Family Residential) District under the terms of Chapter 33 of the Code of the City of Fort Wayne, Indiana of 1974:

> Block "C" in George L. Ashley's Homestead Addition to Allen County, Indiana, except that part thereof taken for St. Joe Road right-of-way under project H-1752 (2) in Document No. 87-015828 and recorded in the Office of the Recorder of Allen County, Indiana, after said exception, being more particularly described as follows, to-wit:
>
> Beginning at the point of intersection of the South line of said Block "C" with the West right-of-way line of St. Joe Road as established by said Document 87-015828; thence North 37 degrees 05 minutes 22 seconds East (deed bearing and is used as the basis for bearings in this description), on and along said West right-of-way line, being situated parallel to and 45.0 feet normally distant Northwesterly from the centerline of St. Joe Road as it presently exists, a distance of 526.26 feet to the point of intersection of said West right-of-way line with the North line of said Block "C"; thence North 62 degrees 49 minutes 30 seconds West, on and along said North line, established by deed distances and survey monuments found, a distance of 899.5 feet to the Northwest corner thereof; thence South 27 degrees 35 minutes West, on and along the West line of said Block "C", a distance of 524.7 feet (7.95 chains) to the Southwest corner thereof; thence South 63 degrees 16 minutes East, on and along the South line of said Block "C", a distance of 812.7 feet to the point of beginning, containing 10.247 acres of land, subject to all easements of record.

and the symbols of the City of Fort Wayne Zoning Map No. R-38 as established by Section 11 of Chapter 33 of the Code of the City of Fort Wayne, Indiana are hereby changed accordingly.

SECTION 2. That this Ordinance shall be in full force and effect from and after its passage and approval by the

#484

Mayor.

Councilmember

APPROVED AS TO FORM AND LEGALITY:

J. TIMOTHY MCCAULAY, CITY ATTORNEY

Read the first time in full and on motion by Henry, seconded by D Smith, and duly adopted, read the second time by title and referred to the Committee on Rules & Ordinances (and the City Plan Commission for recommendation) and Public Hearing to be held af due legal notice, at the Common Council Conference Room 128, City-County Building, Fort Wayne, Indiana, on _____, the _____, da of _____, 19____, at _____ o'clock ____ M.,E.S.T.

DATED: 8-13-91

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Read the third time in full and on motion by Henry, seconded by Redd, and duly adopted, placed on its passage PASSED LOST by the following vote:

	AYES	NAYS	ABSTAINED	ABSENT
TOTAL VOTES	_____	8	_____	1
BRADBURY	_____	"	_____	_____
BURNS	_____	"	_____	_____
EDMONDS	_____	"	_____	_____
GiaQUINTA	_____	_____	_____	"
HENRY	_____	"	_____	_____
LONG	_____	"	_____	_____
REDD	_____	"	_____	_____
SCHMIDT	_____	"	_____	_____
TALARICO	_____	"	_____	_____

DATED: 9-10-91.

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as (ANNEXATION) (APPROPRIATION) (GENERAL) (SPECIAL) (ZONING MAP) ORDINANCE RESOLUTION NO. _____ on the _____ day of _____, 19____

ATTEST: (SEAL)

_____
SANDRA E. KENNEDY, CITY CLERK

_____
PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the _____ day of _____, 19___ at the hour of _____ o'clock _____ .M.,E.S.T.

_____
SANDRA E. KENNEDY, CITY CLERK

Approved and signed by me this _____ day of _____, 19____, at the hour of _____ o'clock _____ M.,E.S.T.

_____
PAUL HELMKE, MAYOR

PRESCRIBED BY STATE BOARD OF ACCOUNTS BOYCE FORMS SYSTEMS, MUNCIE, IN. GENERAL FORM NO. 552

RECEIPT

№ 10851

COMMUNITY & ECONOMIC DEVELOPMENT

FT. WAYNE, IND., 7-17 19 91

RECEIVED FROM Hackmeyer - Miller Funeral $ 100.00

THE SUM OF One Hundred + 00/100 DOLLARS

ON ACCOUNT OF RA to R-3

15226 6131 S. Joe Rd.

PAID BY: CASH ☐ CHECK ☑ M.O. ☐

AUTHORIZED SIGNATURE

PETITION FOR ZONING ORDINANCE AMENDMENT

RECEIPT NO. _____

THIS IS TO BE FILED IN DUPLICATE

DATE FILED _____

INTENDED USE _____

I/~~We~~ Jane Gessener
(Applicant's Name or Names)

do hereby petition your Honorable Body to amend the Zoning Map of Fort Wayne Indiana, by reclassifying from a/an RA District to a/an R-3 District the property described as follows:

Block "C" in George L. Ashley's Homestead Addition to Allen County, Indiana, except that part thereof taken for St. Joe Road right-of-way under project H-1752 (2) in Document No. 87-015828 and recorded in the Office of the Recorder of Allen County, Indiana, after said exception, being more particularly described as follows, to-wit:

Beginning at the point of intersection of the South line of said Block "C" with the West right-of-way line of St. Joe Road as established by said Document 87-015828; thence North 37

(Legal Descrption) If additional space is needed, use reverse side. (continued)

ADDRESS OF PROPERTY IS TO BE INCLUDED:

6131 St. Joe Road
Fort Wayne, Indiana 46835

(General Description for Planning Staff Use Only)

I/We, the undersigned, certify that I am/We are the owner(s) of fifty-one percentum (51%) or more of the property described in this petition.

Jane Gessener	3151 Oswego Avenue, Fort Wayne IN 46805	× Jane B. Gessner	
(Name)	(Address)	(Signature)	

(If additional space is needed, use reverse side.)

Legal Description checked by _____
(OFFICE USE ONLY)

NOTE FOLLOWING RULES

All requests for deferrals, continuances, withdrawals, or requst that the ordinance be taken under advisement shall be filed in writing and be submitted to the City Plan Commission prior to the legal notice pertaining to the ordina being sent to the newspaper for legal publication. If the request for deferra continuance or request that ordinances be taken under advisement is received prior to the publication of the legal ad being published the head of the Plan Commission staff shall not put the matter on the agenda for the meeting at whi it was to be considered. The Plan Commission staff will not accept request from petitioners for deferrals, continuances, withdrawals, or requests that an ordinance be taken under advisement, after the legal notice of said ordinance is forwarded to the newspaper for legal publication but shall schedule the mat for hearing before the City Plan Commission. (FILING FEE $100.00)

Name and address of the preparer, attorney or agent.

Andrew M. Goeglein	420 Metro Bldg., Fort Wayne, IN 46802	219/426-2244
(Name)	(Address & Zip Code)	(Telephone Number)

COMMUNITY DEVELOPMENT AND PLANNING / Division of Long Range Planning & Zoning and (CITY PLAN COMMISSION) / Room #830, City-County Building, One Main Street, Fort Wayne, IN 46802 (PHONE: 219/ 427-1140).

Applicants, Property owners and preparer shall be notified of the Public Hear approximately ten (10) days prior to the meeting.

Legal Description of property to be rezoned.

Owners of Property

(Name)	(Address)	(Signature)
Jane B. Gessner	3151 Oswego	Jane B. Gessner

NOTE: All checks are to be made payable to: CITY OF FORT WAYNE

This form is to be filed in duplicate.

NOTICE:

FILING OF THIS APPLICATION GRANTS THE CITY OF FORT WAYNE PERMISSION TO POST "OFFICIAL NOTICE" ON THE PETITIONED PROPERTY.

FAILURE TO POST, OR TO MAINTAIN POSTING CAN PREVENT THE PUBLIC HEARING FROM BEING HELD.

degrees 05 minutes 22 seconds East (deed bearing and is used as the basis for the bearings in this description), on and along said West right-of-way line, being situated parallel to and 45.0 feet normally distant Northwesterly from the centerline of St. Joe Road as it presently exists, a distance of 526.26 feet to the point of intersection of said West right-of-way line with the North line of said Block "C"; thence North 62 degrees 49 minutes 30 seconds West, on and along said North line, established by deed distances and survey monuments found, a distance of 899.5 feet to the Northwest corner thereof; thence South 27 degrees 35 minutes West, on and along the West line of said Block "C", a distance of 524.7 feet (7.95 chains) to the Southwest corner thereof; thence South 63 degrees 16 minutes East, on and along the South line of said Block "C", a distance of 812.7 feet to the point of beginning, containing 10.247 acres of land, subject to all easements of record.

RESOLUTION OF ZONING ORDINANCE AMENDMENT RECOMMENDATION

WHEREAS, the Common Council of the City of Fort Wayne, Indiana, on August 13, 1991 referred a proposed zoning map amendment to the City Plan Commission which proposed ordinance was designated as Bill No. Z-91-08-09; and,

WHEREAS, the required notice of public hearing on such proposed ordinance has been published as required by law; and,

WHEREAS, the City Plan Commission conducted a public hearing on such proposed ordinance on August 19, 1991.

NOW THEREFORE, BE IT RESOLVED that the City Plan Commission does hereby recommend that this ordinance be returned to the Common Council with a DO NOT PASS recommendation based on the Commission's following "Findings of Fact".

(1) the grant will be injurious to the public health, safety, morals and general welfare of the community;

(2) the use or value of the area adjacent to the property included in the rezoning will be affected in a substantially adverse manner;

(3) the need for the rezoning does not arise from conditions peculiar to the property involved and the condition is not due to the general conditions of the neighborhood;

(4) the strict application of the terms of the zoning ordinance will not constitute an unusual and unnecessary hardship to this property;

(5) the grant interferes substantially with the comprehensive plan adopted under the 500 series of the metropolitan development law; and,

BE IT FURTHER RESOLVED that the Secretary is hereby directed to present a copy of this resolution to the Common Council at its next regular meeting.

This is to certify that the above is a true and exact copy of a resolution adopted at the meeting of the Fort Wayne City Plan Commission held August 26, 1991.

Certified and signed this
27th day of August 1991.

Robert Hutner
Secretary

#484

ORIGINAL ORIGINAL

DIGEST SHEET

TITLE OF ORDINANCE Zoning Map Amendment

DEPARTMENT REQUESTING ORDINANCE Land Use Management - C&ED

SYNOPSIS OF ORDINANCE 6131 St Joe Road

Z-91-08-09

EFFECT OF PASSAGE Property is currently zoned RA - Suburban Residential. Property will become R-3 - Multi-Family Residential.

EFFECT OF NON-PASSAGE Property will remain RA - Suburban Residential.

MONEY INVOLVED (Direct Costs, Expenditures, Savings)

(ASSIGN TO COMMITTEE (J.N.)

FACT SHEET

Z-91-08-09
BILL NUMBER

Division of Community Development & Planning

BRIEF TITLE
Zoning Map Amendment
From RA to R-3

APPROVAL DEADLINE

REASON

DETAILS

Specific Location and/or Address
6131 St Joe Road

Reason for Project
Construction of a mortuary.

Discussion (Including relationship to other Council actions)

19 August 1991 - Public Hearing

See Attached Minutes of Meeting

26 August 1991 - Business Meeting

Motion was made and seconded to return the ordinance to the Common Council with a DO NOT PASS recommendation.

Of the eight (8) members present, seven (7) voted for the motion, one (1) did not vote.

Motion carried.

POSITIONS	RECOMMENDATIONS
Sponsor	City Plan Commission
Area Affected	**City Wide** **Other Areas**
Applicants/ Proponents	**Applicant(s)** Jane Gessener **City Department** **Other**
Opponents	**Groups or Individuals** Kathryn Franklin, 3501 Shoaff Pk River Dr **Basis of Opposition** -R-3 zoning would allow uses that would not be compatible with the surrounding area
Staff Recommendation	☐ For ☒ Against **Reason Against** -approval would have a negative impact on the surrounding properties
Board or Commission Recommendation	**By** ☐ For ☒ Against ☐ No Action Taken ☐ For with revisions to conditions (See Details column for conditions)
CITY COUNCIL ACTIONS (For Council use only)	☐ Pass ☐ Other ☐ Pass (as amended) ☐ Hold ☐ Council Sub. ☐ Do not pass

DETAILS

POLICY/PROGRAM IMPACT

Policy or Program Change	☐ No ☐ Yes
Operational Impact Assessment	

(This space for further discussion)

Project Start — Date July 17, 1991

Projected Completion or Occupancy — Date August 27, 1991

Fact Sheet Prepared by — Date August 27, 1991

Patricia Biancaniello

Reviewed by — Date 8/28/91

Michael A Dapp

Reference or Case Number

Bill No. Z-91-08-09 - Change of Zone #484
From RA to R3
6131 St Joe Road

Andrew Goeglein, agent for the petitioner Jane Gessener appeared before the Commission. Mr. Goeglein stated that they were requesting the rezoning to facilitate the construction of a mortuary. Mr. Goeglein stated that an R3 designation is the most restrictive designation that allows construction of a mortuary on this site. He stated that to his knowledge there is no opposition to the proposed use of the property for a mortuary. He stated that the use would be a very low non intensive use of the property and he felt it would be compatible with the surrounding area. He stated that the site does have some residential uses adjacent to it, however, many of the homes that are adjacent are duplexes. He stated that they do not believe the use is incompatible with those uses. He stated that although the staff has stated there is no R3 in the immediate area, one does not have to look very far in that general area to see some rather large apartment type complexes in the area. He stated that there is also a car wash and shopping center in the area. He stated that the staff is concerned that if the property is rezoned and they do not follow through with the proposed use this could open up the site to more intensive uses such as multi-family use. He stated that the staff does not seem to indicate that the site is not suitable for a mortuary but that they do feel that possible other uses under the R3 classification would not be compatible with the area. He stated that the staff has proposed an amendment to the Zoning Ordinance that would allow the mortuary in the current zoning as a contingent use with Board of Zoning Appeals approval. He stated that their concern is that there is no guarantee that the Commission would approve such a change. He stated that in addition these changes would hold up the people he was representing from constructing on the site in this construction season.

Mel Smith questioned what their timetable was.

Mr. Goeglien stated that they would like to get started during the current construction season. He stated that if they have to wait until the Zoning Ordinance is amended and then go through the Board of Zoning Appeals they would be looking at approval at the end of November. He stated this means they would not be able to start construction until December, which is at best December has highly unpredictable weather.

Mark Gensic questioned what the consequences were of taking this to the Board of Zoning Appeals.

Greg Purcell stated that there are three alternate paths the petitioner could follow. He stated that the petitioner is quite right when he says that the staff has no problem with mortuary as a land use for this particular area. He stated the issue is should we rezone this to R-3 and what uses would R-3 allow in

there that would be inappropriate, not to say that the developer is not going to develop the mortuary as proposed, but if it is rezoned and something happens to their plans, what incompatible uses could occur there. He stated with that in mind the staff recommendation to the Commission is do not pass because of the potential for incompatible uses. He stated the developer has the alternative to go to the Board of Zoning Appeals and ask for a Use Variance. He stated that it does not appear that they could meet hardship requirements for a Use Variance, given that, the staff is proposing an actual amendment to the ordinance, which would allow for a contingent use in the current classification. He stated the contingent use would be appropriate but it would require an amendment to the Zoning Ordinance and then it would have to go to the Board of Zoning Appeals. He stated that the difficulty for the petitioners is the time constraint. He stated that staff does not have a way of cutting through the time required for the amendment. He stated that the staff needs to know as soon as possible if the Commission wants them to pursue the ordinance amendment.

Mel Smith questioned if it would not be in the best interest of the developer to file with the Board of Zoning Appeals.

Mr. Purcell stated that they would have to file for a Use Variance and a hardship requirement in the determination finding is required by the Board of Zoning Appeals. He stated that the staff does not make that case for the petitioner and, they have not made the case that they could meet that criteria. He stated that it is incumbent upon the petitioner to meet state statutory requirements for hardship. He stated the three alternatives are to rezone, go to the Board of Zoning Appeals, or amend the ordinance.

Mr. Goeglein stated that he felt the only viable option under the current Zoning Ordinance is what they have before the Commission at this time. He stated that he did not feel that they could prove a hardship that the only use for the property could be a mortuary. He stated that they cannot propose a contingent use because the current Zoning Ordinance does not allow that.

Kathryn Franklin, 3501 Shoaff Park River Drive, a member of the Board of the neighborhood association appeared before the Commission. Ms. Franklin stated that they were not opposed to the proposed use of the property for a mortuary. She stated however that there are 10 acres to this parcel and only the first 4 acres would be used for the construction of the mortuary. She stated that leaves 6 acres undeveloped that would be rezoned to R-3. She stated that they are concerned as to what could be developed on that remaining property if rezoned to R-3.

In rebuttal Mr. Goeglein stated that he felt Ms. Franklin's comments were those of the staffs. He stated she was not against the use but the reclassification. He stated that it would be in the best interest of the developer to maintain the property and

not to allow any other use that would be detrimental to the area or their service.

Bob Hutner questioned what type of buffering they would have between the mortuary and the residences.

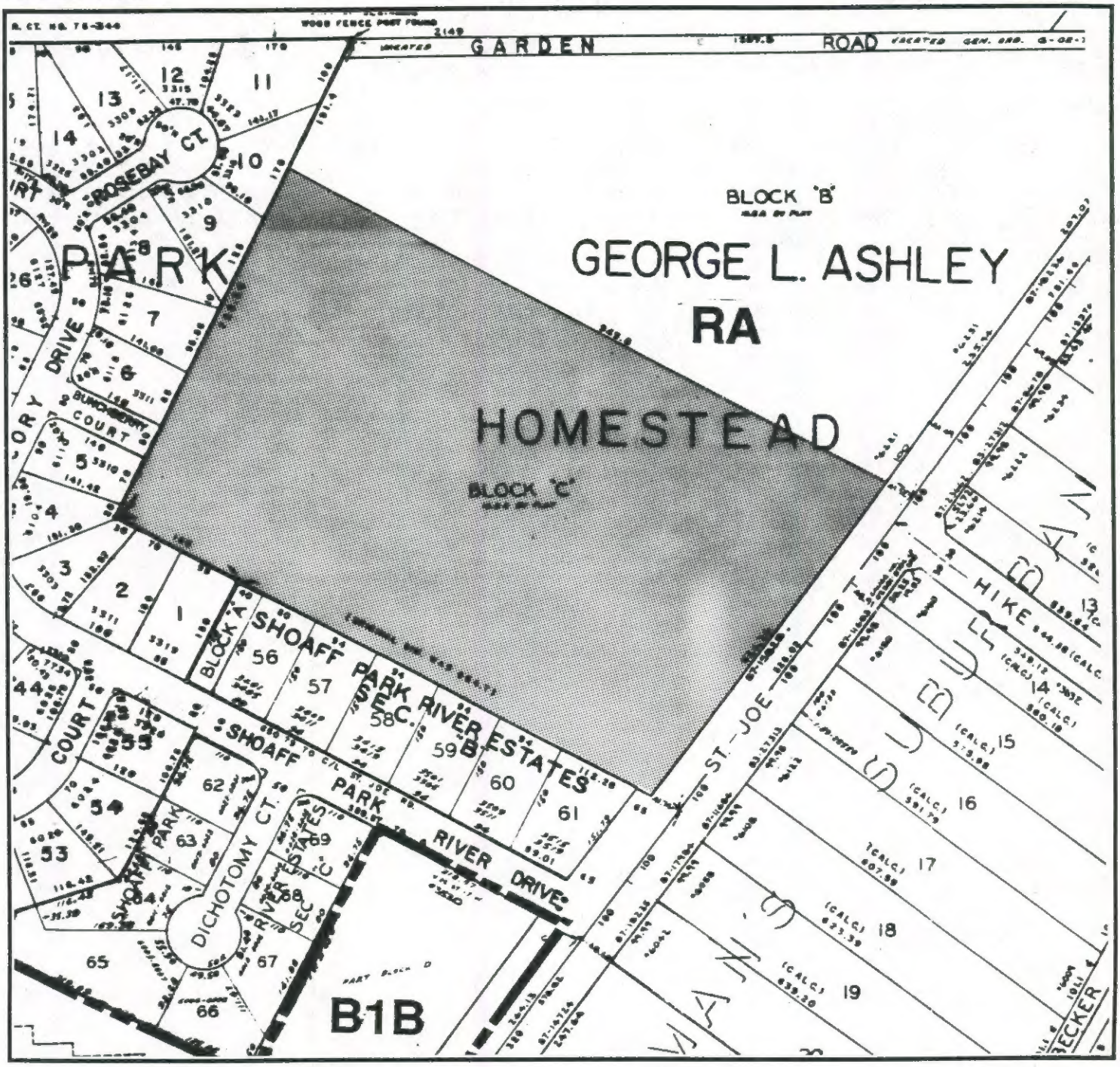
The architect stated that they will put whatever is necessary on the property for buffering. He stated that they have not developed their plans to that extent at this time. He stated they do have some excess dirt on the property that they are contemplating at this time using the dirt as berm material and planting shrubs.

There was no one else present who wished to speak in favor of or in opposition to the proposed rezoning.

REZONING PETITION

AREA MAP

CASE NO. #484



COUNCILMANIC DISTRICT NO. 3

Map No. R-38
LW 7-25-91

R1	One-Family	**B1**	Limited Business	**M1**	Light Industrial
R2	Two-Family	**B2**	Planned Shopping Center	**M2**	General Industrial
R3	Multi-Family	**B3**	General Business	**M3**	Heavy Industrial
RA/RB	Residential	**B4**	Roadside Business	**MHP**	Mobile Home Park
PUD	Planned Unit Dev.	**POD**	Professional Office District		

BILL NO. Z-91-08-09

REPORT OF THE COMMITTEE ON REGULATIONS

THOMAS C. HENRY, CHAIRMAN
DAVID C. LONG, VICE CHAIRMAN
EDMONDS, SCHMIDT, BRADBURY

WE, YOUR COMMITTEE ON REGULATIONS TO WHOM WAS

REFERRED AN (ORDINANCE) (~~RESOLUTION~~) amending the City of Fort Wayne Zoning Map No. R-38

HAVE HAD SAID (ORDINANCE) (~~RESOLUTION~~) UNDER CONSIDERATION AND BEG LEAVE TO REPORT BACK TO THE COMMON COUNCIL THAT SAID (ORDINANCE) (~~RESOLUTION~~)

DO PASS	DO NOT PASS	ABSTAIN	NO REC
	Thom C. Henry		
	J G Bradbury		
	R Edmonds		
	David C Long		
	D J Schmidt		

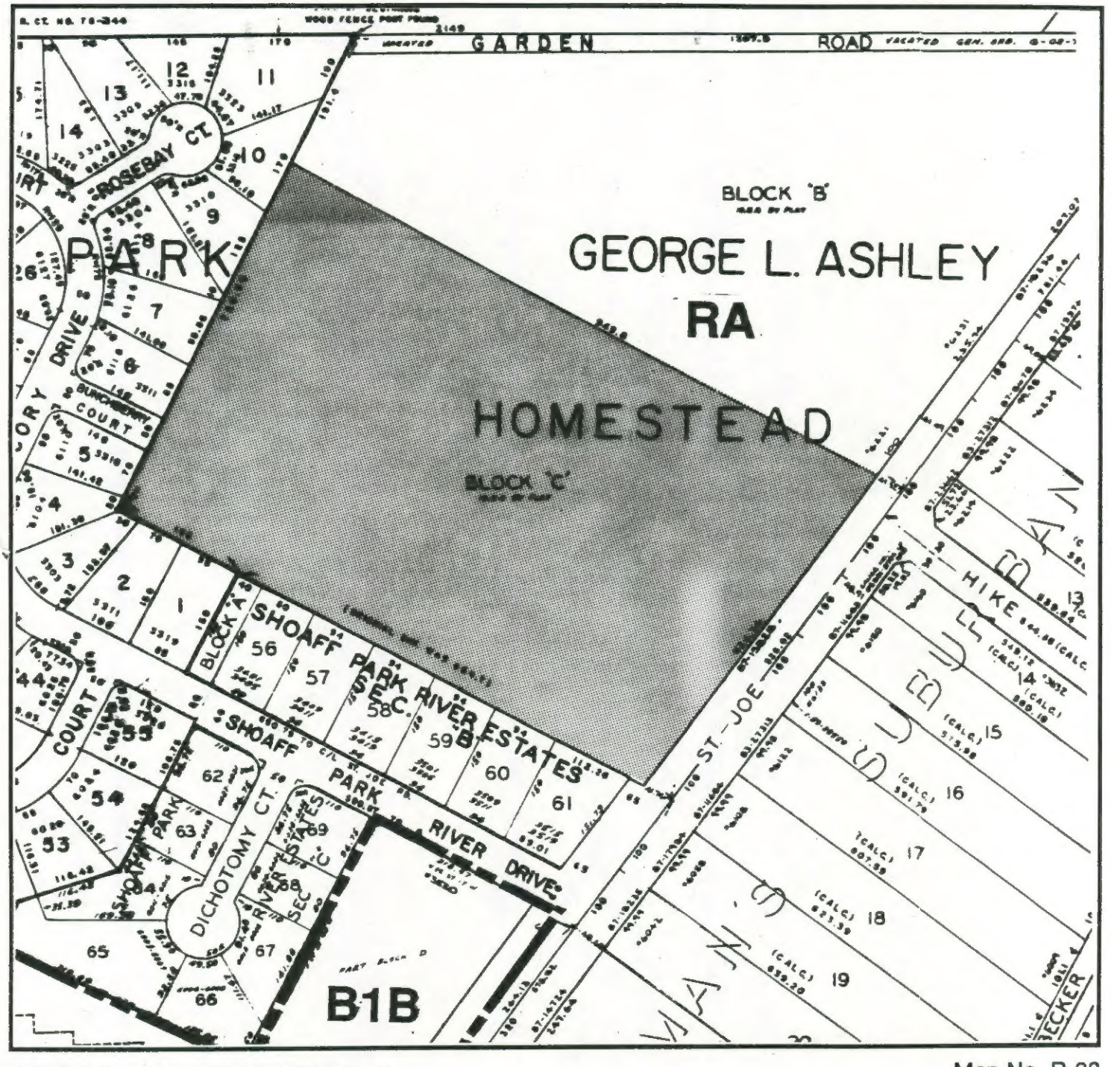
DATED: 9-10-91.

Sandra E. Kennedy
City Clerk

REZONING PETITION

AREA MAP

CASE NO. #484



COUNCILMANIC DISTRICT NO. 3

Map No. R-38
LW 7-25-91

R1	One-Family	**B1**	Limited Business	**M1**	Light Industrial
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RA/RB	Residential	**B4**	Roadside Business	**MHP**	Mobile Home Park
PUD	Planned Unit Dev.	**POD**	Professional Office District		